(1) S.B. Civil Misc. Appeal No.912/2007
(National Insurance Company Ltd. Vs. Dhanna & ors.)

(1) S.B. Civil Misc. Appeal No.913/2007
(National Insurance Company Ltd. Vs. Smt.Devi & ors.)

Date of Order :: 13th February 2007

HON'BLE MR. JUSTICE DINESH MAHESHWARI

Mr. Jagdish Vyas for the appellant.

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These two appeals, CMA Nos.912/2007 and 913/2007 have been preferred by the insurer of the vehicle involved in accident against the common award dated 12.09.2006 made by the Motor Accidents Claims Tribunal [Addl. District Judge (Fast Track) No.5], Udaipur Headquarter Salumber in two claim cases relating to the same accident and involve common questions; and having examined the award impugned, this Court is satisfied that these appeals remain bereft of substance; and hence are being disposed of by this common order.

Background facts are that on 24.04.2003 a bus bearing registration No.RJ 27 P 1223 going from Lasadiya to Dhariyawad capsized in Lalpura valley causing injuries to the occupants; one of the passengers Heera succumbed to the injuries whereas another passenger Dhanna sustained simple

and grievous injuries. The dependents of deceased Heera and so also the injured Dhanna filed their respective claim applications narrating the incident aforesaid and claiming compensation against the insurer, owner and driver of the vehicle involved in accident. The owner and driver, non-applicants Nos.2 and 3 remained ex parte; and the insurer, present appellant, contested the claim applications, inter alia, on the contentions that the registered owner of the vehicle Heeralal had transferred the vehicle to one Bhagwanlal who in turn transferred the vehicle to one Lalchand and, therefore, the real owner of the vehicle was Lalchand under whose control the vehicle was being plied by Jitendra Singh, non-applicant No.3. The insurer also alleged that Lalchand while concealing material facts and posing as Heeralal (registered owner) obtained insurance policy and, therefore, the contract of insurance was void-ab-initio. It was also averred that the said Bhagwanlal and Lalchand were necessary parties and for their non-joinder, the claim applications were liable to be rejected. The insurer also took the defence that sitting capacity of the bus in question was of 38 persons but at the time of accident, the bus was over-crowded and several persons were standing inside and several were riding on roof-top and for excessive number of occupants, the bus could not climb up and over-turned leading to the accident; and, according to the insurer,

breach of the terms of permit by carrying excess number of passengers amounted to violation of policy conditions and hence the insurer was entitled to be exonerated. After framing of necessary issues, the claimants examined Smt. Devi wife of the deceased Heera as AW-1 and the injured claimant Dhanna as AW-2 and produced relevant documentary evidence as Ex.1 to Ex.17 whereas a witness Vipin Kumar Gupta was examined as NAW-1 on behalf of the non-applicant but no documentary was produced.

After hearing the parties and with reference to the material available on record, the Tribunal decided the issue concerning responsibility towards accident in favour of the claimants and found the accident to have occurred for rash and negligent driving of the bus in question.

Taking up the defence raised by the insurer, the Tribunal observed that the statement of NAW-1 Vipin Kumar Gupta in relation to the actual owner of the vehicle was made merely with reference to the documents and was not based on any personal knowledge. The Tribunal also found that registered owner Heeralal was the insured as seen from the Insurance Policy Ex.17. The Tribunal also observed that so far excessive number of passengers was concerned, the same was not of violation of terms of permit as already settled by the decisions of this Court and of the Apex Court; and that the

fact regarding excessive passengers was not established either because the witness made the statements merely with reference to the papers prepared by the police during investigation. The Tribunal observed that in any case, there was no violation of policy conditions and the insurer cannot escape its liability. The Tribunal proceeded to award compensation in the sum of Rs.3,29,000/- to the dependents of about 45 years old Heera and in sum of Rs.25,000/- to the injured claimant Dhanna.

The submissions sought to be made in this appeal regarding Lalchand being the actual owner of the vehicle do not carry any substance for the reasons already noticed by the Tribunal that Heeralal was registered owner of the vehicle and in his name insurance coverage was issued by the appellant-insurer; and the facts concerning Lalchand cannot be taken conclusively proved merely with reference to the noting on notice under Section 133 of the Motor Vehicles Act. Other contention regarding violation of policy conditions by carrying excessive number of passengers than the sitting capacity has also rightly been rejected by the Tribunal, firstly for such fact having not been proved by cogent evidence; and secondly, for such alleged excessive number of passengers being not the violation of the purpose for which the permit is granted, and hence not of violation of policy conditions, as held in Division

Bench decision of this Court rendered on 05.05.2006 in D.B.Civil Special Appeal No.5/2006: National Insurance Co. Ltd. Vs. Smt.Mohani Bai & ors and other connected cases wherein, after travelling through a substantial number of decided cases, this Court has pointed out,-

> "On a plain reading of the Section 149 (2) (a) (i) (c), it is obvious that the term 'purpose' therein refers to the purpose for which the vehicle is to be used. This is apparent from the words "a condition excluding the use of the vehicle" in clause (i) of which sub-clause (c) is part. The purpose in sub-clause (c) refers to the use of the vehicle, and where the vehicle is used for carrying passengers, merely because the number of passengers was more than specified in the permit, it cannot be said that there was any violation of the purpose, that is to say, the vehicle was being used for a purpose other than allowed under the permit. The purpose refers to the permit, that is, allowed by the permit. Unless there is some major deviation from the purpose in the matter of use, it cannot be said that there was breach of condition of policy."

In the aforesaid view of the matter, the findings recorded by the Tribunal in the award impugned against the appellant do not call for interference and these appeals remain wholly bereft of substance.

The appeals are, therefore, dismissed in limine.

[DINESH MAHESHWARI], J.

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S.B. Civil Misc. Appeal No.913/200
(National Insurance Company Ltd. Vs. Smt.Devi & ors.)

DATED : 13th February 2007

HON'BLE MR.JUSTICE DINESH MAHESHWARI

Mr. Jagdish Vyas for the appellant

Dismissed. (See separate order in CMA No.912/2007).

B.O.

COURT MASTER